

Human Rights Council Advisory Committee

Questionnaire on patterns, policies, and processes leading to incidents of racial discrimination and on advancing racial justice and equality ('systemic', 'structural' and 'institutional' racism)

[Release](#) is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact on our clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than a criminal justice approach. Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality. Release is a NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

Release is pleased to share this submission with the UN Human Rights Council Advisory Committee to assist in their examination of patterns, policies and processes contributing to incidents of racial discrimination and to advance racial justice and equality, which should be firmly anchored in the fulfilment of the 2030 Agenda for Sustainable Development and the attainment of its Goals. We understand the aim is to advance racial justice and equality in the context of law enforcement established by the Human Rights Council in its resolution 47/21, and to present the study to the Human Rights Council at its fifty-fourth session (September 2023).

This submission focuses on the discriminatory application of drug law enforcement on Africans and people of African descent. It provides evidence of its negative and discriminatory impacts, with a focus on the United Kingdom. Finally, it provides a brief examination of possible ways to address the inherently racist nature of punitive drug policies. It is hoped that the information provided in this submission contributes to the promotion and protection of the human rights and fundamental freedoms of Africans and people of African descent against systemic racial discrimination and other human rights violations by law enforcement, and their discriminatory outcomes, in the context of drug control. In essence, when looking at racial injustices and disparities perpetrated by state actors including the police, it is impossible to ignore the impact of drug law enforcement, in many countries across the Globe it is drug prohibition that drives racial disproportionately within the criminal justice system.

Release will only address the questions relevant to this aspect of law enforcement, as such we have answered questions 1,2, 8, 9, 11, 14 and 20:

1. Is there a working definition or understanding of systemic, structural or institutional racism in your country/by your government/your organisation?

The most recent report on racism by the UK government is the 'Commission on Race and Ethnic Disparities: The Report' (also known as the Sewell report). The report explicitly defines the terms, 'institutional racism', 'systemic racism' and 'structural racism'. In terms of definitions, it defines 'institutional racism' as an institution that is racist or has discriminatory processes, policies, attitudes

or behaviours in a single institution. 'Systemic racism' is viewed as 'interconnected organisations, or wider society, which exhibit racist or discriminatory processes, policies, attitudes or behaviours'ⁱ. Meanwhile, 'structural racism' is determined as 'a legacy of historic racist or discriminatory processes, policies, attitudes or behaviours that continue to shape organisations and societies today'ⁱⁱ. The Sewell report claims its focus was to understand and examine the underlying causes of racial disparities and argues that terms such as institutional racism should specifically be used 'when deep-seated racism can be proven on a systemic level and not be used as a general catch-all phrase for any microaggression, witting or unwitting'ⁱⁱⁱ.

Release is disappointed by the findings of the report due to its complete dismissal of the extent of the structural, systemic, and institutional racism in the UK. The Sewell report claims that debates regarding institutional racism in the UK only serve to alienate 'the decent centre ground – a centre ground which is occupied by people of all races and ethnicities' is concerning^{iv}. Moreover, the Commission states that racism is used too liberally which in turn, undermines the seriousness of the issue. Release, along with many other experts and civil society organisations in the UK, is critical of the findings of this report, if the UK government is unable to engage with institutional racism meaningfully then it will not be able to address the racially discriminatory factors underlying current drug policy and enforcement. This report seems to be in line with the government's concern with 'cancel culture' and 'wokeness' as seen in the media. However, this narrative only proves to be a hindrance to producing any real change against the presence of systemic and institutional racism in the UK.

2. Is systemic, structural or institutional racism a prominent issue in your country? Is there any official acknowledgement that systemic/structural/institutional racism exists; and that it is a problem? In what sectors does systemic/structural/institutional racism occur – for example, access to justice, access to services, enjoyment of socio-economic cultural rights? (Refer to decided cases by national courts where relevant.)

Institutional racism is a prominent issue in the UK. Release is particularly concerned about the issue of institutional racism within the enforcement of drug laws by the police and the subsequent over-policing of Black and ethnic minority communities. The organisation has written extensively about racial disparities in the policing and prosecution of drug offences.^v

Alongside other organisations, and as highlighted above, Release finds the UK government's Sewell report worrying. In particular, it's dismissal of institutional racism, regarding it as "no longer a valid or useful explanation for the various forms of inequality, discrimination, disproportionate disadvantage, restriction or exclusion experienced daily by BME groups"^{vi}. The report selects alternative explanations, including geography and socioeconomic status, but also culture, language and family issues, to obviate the need to consider institutional racism as the underlying cause.

Policing in the UK has long been considered institutionally racist.^{vii} Release's most recent report, 'The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales'^{viii}, clearly outlines the disproportionate impact of drug law enforcement on black and minority ethnic communities. Stop and search powers are more heavily concentrated on Black and minority ethnic groups, and this is driven by searches for drugs. In 2016/17, Black people were stopped and searched for drugs at nine times the rate of white people, with Asian people and those in the 'mixed' group stopped and searched at

more than three times the rate of white people – this is despite drug use being less likely within ethnic minority groups^x. Crucially, stop-searches for drugs are the main bulk of the police’s use of

such measures in comparison with its use for other offences - in 2016/17 drug stop and searches accounted for two-thirds of all searches, by 2020/21 this has increased to almost 69 per cent of all searches^x. Her Majesty’s Inspectorate of Constabulary, Fires and Rescue Services (HMICFRS), the police watchdog for England and Wales, in their 2017 report stated that the ‘find’ rate for drugs is lower for Black than White people, suggesting drug searches on Black people may be based on weaker grounds for suspicion.^{xi} Once again, these figures depict the reality that the enforcement of drug policy serves as a tool which oppresses and controls Black and ethnic minority communities, thereby maintaining racial disparity within the UK.

When found in possession of a controlled drug, which is less likely for a Black person after a police search, Black people are more likely to be arrested and prosecution, whereas White people are more likely to benefit from out of court disposals.^{xii} For 57 percent of Black people arrested due to an outcome from a stop and search, the grounds for arrest is drugs compared to 31 per cent for White people. Black people are 12 times more likely to be prosecuted for cannabis possession compared to the White population.^{xiii}

One of the most shocking statistics from our 2018 report was the fact that there had been a significant decrease in stop and searches over the preceding six years, resulting in a 50 per cent fall of the number of White people arrested for drugs. For Black people this decline in police searches had no impact on the number of people arrested from this ethnic minority group.^{xiv}

The sheer difference between the rates in which White people and people of Black and ethnic minority communities bear the brunt of stop -searches, arrests and prosecutions for drugs clearly indicates an inherent racial bias within British policing, and arguably the wider criminal justice system.

8. How has the ongoing COVID-19 pandemic brought to the surface and exacerbated systemic, structural or institutional racism in your country?

Release’ report, ‘Drugs in the time of COVID-19’ provides a clear picture of the police’s increased use of stop and search for drug-related offences which have particularly been targeted towards Black and ethnic minority communities.^{xv} During the pandemic, it was found that in spite a decrease in crime rates during the first lockdown, stop and search practices ‘surged’. In May 2020 alone, when the whole of the UK was in lockdown, the Metropolitan Police Service conducted 43,913 searches: the highest monthly rate of the police’s use of these powers in London since January 2012. Of these searches, 68% were for drugs^{xvi}. These searches were not linked to COVID-19 restrictions, or adherence with lockdown rules, but it is worth noting that these powers were most used in London boroughs suffering the highest rates of COVID-19 deaths and with the highest number of people from racialised communities Reports of repeated use of handcuffs as “routine” came from those who were being searched by police, despite the fact people were being told to socially distance. The rates of searches for Black people in the Capital increased from 7.2 per 1000 in March to 13.6 per 1000 in May, with black people stopped and searched at 4 times the rate of white people.

The University of Manchester, alongside the Runnymede Trust, found that due to the unprecedented police powers under the Health Protection Regulations and the Coronavirus Act, there was widespread excessive policing across public settings.^{xvii} Systemic racism is clear given the ethnic disproportionality in the administering of fines for breaching coronavirus restrictions. Data shows that, over a six-week period in the initial lockdown, ‘people of colour were 54% more likely to be fined than white people’^{xviii}. Another example is the increased use of section 60 since the beginning of the pandemic this power was originally legislated as a response to football violence. Essentially, it gives police officers the power to stop and search people without grounds for suspicion, in a specified area, for a specified period of time.^{xix} More broadly, it is evident that the pandemic and subsequent increase in police powers did not serve any means of protecting the public or make policing more effective in crime prevention. The only result was the further marginalisation of Black and ethnic minority communities in the UK.

9. To what extent is disaggregated data gathered by state and non-state actors in your country to identify systemic, structural or institutional racism, and to track progress in the measures adopted to address systemic/structural or institutional racism? Is any other data gathering tool used specifically to capture data related to systemic/structural or institutional racism? (Please provide details; refer to quantitative and qualitative data-gathering methodologies, where relevant.)

Section 95 of the Criminal Justice Act 1991 requires that the Secretary of State publishes information to enable those involved in the system to avoid discrimination on the basis of race, sex or any other improper grounds. Since the introduction of this legislation the Home Office, and latterly the Ministry of Justice, has regularly published statistics showing the rate at which people from different ethnic groups come into contact with criminal justice agencies. The Ministry of Justice publishes a compendium of Statistics on Race and the Criminal Justice System every other year. Additional data on ‘race’ and policing are published annually by the Home Office as part of the Police Powers and Procedures series. Both publications assess ethnic disparities on the basis of disproportionality ratios, which compare rates of contact with the criminal justice system across different ethnic groups.

The UK Government largely relies on five sources of data to monitor Ethnicity and the Criminal Justice System in England and Wales, namely ^{xx}:

- Crime Survey of England and Wales (as reported in Crime in England and Wales)
- Police Powers and Procedures, England and Wales
- Criminal Justice Statistics
- Offender Management Statistics Quarterly
- Safety in Custody

For our report ‘The Colour of Injustice: ‘Race’, drugs and law enforcement in England and Wales’ Release used, in addition to the sources listed above, data for the 32 London boroughs covering the 12-months from October 2016 to September 2017. These data were downloaded from the online dashboard published by the Metropolitan Police Service (MPS), the largest of the 43 territorial police forces, which makes by far the greatest use of stop and search. Each police force also publishes data on police.uk detailing number of searches over a specified period, outcomes and ethnicity of those stopped.

Data relating to “stop and account” where police ask members of the public to account for themselves but do not go on to search them is not routinely collected and the absence of this data may hinder efforts to identify systemic, structural or institutional racism, and to track progress in the measures adopted to address systemic/structural or institutional racism.

Release has previously recommended that the Government extends existing requirements for public scrutiny to include a focus on arrests and out of court disposals. It is vital that we understand how people who are subject to a stop and search are treated when found in possession of a prohibited item. Our research showed that Black people and those from other minority groups were more likely to be arrested and prosecuted for possession of drugs, rather than receive out of court disposals, many of which result in no criminal record. This kind of data is fundamental to understanding racial disparities in the system.^{xxi}

11. In your country, what are the main human rights challenges arising from systemic, structural or institutional racism? List and explain them succinctly.

There have been previous human rights challenges to the UK drug laws through the Human Rights Act 1998, which incorporated the European Convention on Human Rights into domestic law.^{xxii} These cases, which dealt with Article 8 (right to privacy)^{xxiii} and Article 9 (freedom, of thought, belief and religion)^{xxiv} were not successful.

That being said there are a number of actions by police in the name of drug law enforcement which may engage human rights obligations. The use of strip search as a continuation of a stop and search to determine if someone is in possession of drugs is widely used by police forces in England and Wales. The recent case in March 2022, of a 15-year-old black girl, known as Child Q, who was strip-searched at school after being wrongly suspected of carrying drugs is an example of the abusive nature of this power. Whilst it is likely that any legal proceedings in this, and similar cases, will engage an action against police, it is arguable that such police actions also engage Article 3 (right to be free from inhumane, cruel and degrading treatment) and Article 8 (right to privacy), in conjunction with the right to protection from discrimination (Article 14).

The charity Inquest reports that since 1990, 16 per cent of deaths in police custody or otherwise following contact with the police are people from Black and ethnic minorities. Inquest’s report states that the death of people from ethnic minority communities is caused by the “use of force” or being “restrained by the police”. Too often, following these acts of state violence, those who have died will be defined as a drug user or drug supplier, as if this in some way excuses police brutality. It is clear evidence of structural racism that needs to be challenged. In the words of Deborah Coles, Director of INQUEST, “the disproportionality in the use of force against Black people adds to their irrefutable evidence of structural racism embedded in policing practice.”^{xxv}

14. Do you think reparations for the root causes of systemic, structural or institutional racism (such as Transatlantic Slavery, colonialism and apartheid) have a current role to play in redressing systemic, structural or institutional racism, and in eradicating it?

In terms of drug policy there is a growing consensus that if our goal of, for example, the decriminalisation and regulation of cannabis is implemented, then tax revenues accumulated through

the legal cannabis market should be aimed at reparative justice. The communities that have been disproportionately targeted and victimised by the prohibition of drugs should be prioritised and tax money generated by a legal cannabis market reallocated to address the impact of historical overuse of criminal justice responses through the use of targeted interventions.

Drug policy has been an instrument of repression and oppression inextricably tied to racism and xenophobia. Criminalising and stigmatising certain substances and making their use seem ‘deviant’ has served to demonise, dehumanise and marginalise the communities who use them.

Reparations, however, would indeed need to work in conjunction with an effort to increase the participation of ethnic minority and historically disadvantaged people by removing barriers that exist and giving them priority access to participation in the legal cannabis market. As well as undoing the harms caused by drug law enforcement, namely in ensuring the expungement of criminal records.

As Release states in our report, ‘REGULATING RIGHT, REPAIRING WRONGS: Exploring Equity and Social Justice Initiatives within UK Cannabis Reform’^{xxvi}

“There is a responsibility to design a racially inclusive industry and a cannabis policy that prioritises the representation of those who have been dealt the severest injustices due to cannabis prohibition and the wider drug control regime.”

Reparative justice should not just be about reallocating revenues towards the communities most affected by systemic, structural or institutional racism, although this is a significant part, efforts should be made to combine this with a recognition of the disadvantage that these laws and attitudes have had on ethnic minorities and proactive measures should be enacted with equity at the heart. Cannabis legalisation is happening across the Globe, in countries like Canada, Uruguay, and Malta, with nearly half of all US states having regulated and licensed this substance. Many of those States have ensured cannabis social equity models, based on principles of reparation, are core to the legislation enacting these reforms.^{xxvii}

20. What role do you consider new emerging technologies, such as artificial intelligence based on algorithms, play in eradicating or sustaining systemic patterns of racial inequality?

We believe that there exists a risk that emerging technologies based on A.I. and the use of algorithms will reinforce some of the existing biases and inequalities that we see in our society. One example is the increased use of live facial recognition technology (also referred to as ‘automated facial recognition’ (AFR) or simply as ‘facial recognition’) by the police in the United Kingdom which has become the subject of heated discussion in recent years. The technology is used by the Police at some large public events as a dragnet to locate ‘persons of interest’ within the crowd who, once identified, will then potentially be questioned in person, using stop and search powers.

The controversy has centred around two issues. The first is that the use of this technology erodes the privacy of members of the public, many of whose faces will be processed and analysed by AFR without their knowledge. The second point of controversy is the risk of a racial or gender bias in the way that ‘person’s of interest’ are identified. Bias has been found to be a feature common in AFR systems^{xxviii}, with the faces of Black and Asian populations more likely to be flagged, and recent case law in the UK has determined that the use of AFR technology breaches privacy law and equality law.

A major issue with emerging technologies such as AFR is the information from which they form their decisions. AFR algorithms are ‘trained’ and are only as good as the information that has been used to train them^{xxix}. The information sets that inform the algorithms used in these facial recognition technologies to determine ‘persons of interest’ are unknown, protected by commercial confidentiality by the companies that develop them^{xxx}, out of reach even from the Police forces that use them, and so the Police (and public that are subjected to them) cannot be sure they are free of racial or other bias.

There are similar issues in the case of ‘predictive policing’ which is a model of policing that uses data on historic crime and the locations of these crimes and seeks to predict future offences. There are ongoing concerns on the accuracy of the data which Police Forces rely on which have in some cases been racially biased. An example of this is the ‘Gang Matrix’ used by the Metropolitan Police (Met) as a response to the 2011 London riots and knife crime. The Gang Matrix identifies potential members of criminal gangs and allocates scores on alleged gang members based on the perceived risk that they pose to communities. 78% of those on the Gang Matrix are Black which is disproportionate to the Met’s own figures which show that only 27% of those who commit serious crime in London are black^{xxxi}. Information gathered from someone’s social media account can lead to their being added to the Matrix, even being a victim of crime can be viewed as an indicator of a likelihood of ‘subsequently becoming drawn in to involvement in serious crime’ and can result in their being added. Many of those on the Gang Matrix then face problems with their immigration, housing, education, and employment.

Technology based on A.I. algorithms must address the problems of racial bias. Measures such as AFR and predictive policing are oppressive and subject, even amplify, the inherent racial biases and inequality towards minorities that exist in our society.

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ⁱ Race Disparity Unit, 2021, *Commission on Race & Ethnic Disparities: The Report*, UK Government, ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974507/20210331 - CRED Report - FINAL - Web Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974507/20210331_-_CRED_Report_-_FINAL_-_Web_Accessible.pdf))

ⁱⁱ Ibid

ⁱⁱⁱ Ibid

^{iv} Ibid

^v Shiner et. al, 2018, *The Colour of Injustice: ‘Race’, drugs and law enforcement in England and Wales*, Release, (<https://www.release.org.uk/publications/ColourOfInjustice>); Eastwood, Shiner & Bear, 2014, *The Numbers in Black And White: Ethnic Disparities In The Policing And Prosecution Of Drug Offences In England And Wales*, Release (<https://www.release.org.uk/publications/numbers-black-and-white-ethnic-disparities-policing-and-prosecution-drug-offences>)

^{vi} Race Disparity Unit, 2021, *Commission on Race & Ethnic Disparities: The Report*, UK Government

^{vii} Macpherson, 1991, *The Stephen Lawrence Inquiry*, UK Government,

(<https://www.gov.uk/government/publications/the-stephen-lawrence-inquiry>)

^{viii} Shiner et. al, 2018, *The Colour of Injustice: ‘Race’, drugs and law enforcement in England and Wales*, Release.

^{ix} Ibid

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- ^x UK Home Office, 2022, *Police Powers and Procedures*, UK Government, (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033319/stop-search-data-tables-summary-ppp-mar2021.ods)
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- ^{xii} Shiner et. al, 2018, *The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales*, Release
- ^{xiii} Ibid
- ^{xiv} Ibid
- ^{xv} Aldridge, J., Garius, L., Spicer, J., Harris, M., Moore, K. & Eastwood, N., 2021, *Drugs in the Time of COVID: The UK Drug Market Response to Lockdown Restrictions*, Release (<https://www.release.org.uk/publications/covid-drugs-market-survey>)
- ^{xvi} Ibid; Release, 2022, *Release's submission(s) to the Home Affairs Committee's Drugs Inquiry*, (<https://www.release.org.uk/publications/releases-written-response-home-affairs-committees-drugs-inquiry>)
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- ^{xviii} Ibid
- ^{xx} Ministry of Justice, 2020, *A Technical Guide to Statistics on Ethnicity and the Criminal Justice System, 2020*, UK Government (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037706/A_Technical_Guide_to_Statistics_on_Ethnicity_and_the_CJS_2020.pdf)
- ^{xxi} Shiner et. al, 2018, *The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales*, Release
- ^{xxii} Human Rights Act, 1988
- ^{xxiii} R v Quayle & others [2005]
- ^{xxiv} R v Taylor [2001]
- ^{xxv} Inquest, *BAME deaths in police custody*, 2022 (<https://www.inquest.org.uk/deaths-in-police-custody>)
- ^{xxvi} Garius & Ali, 20220, 'REGULATING RIGHT, REPAIRING WRONGS: Exploring Equity and Social Justice Initiatives within UK Cannabis Reform' (<https://www.release.org.uk/publications/cannabis-regulating-right>)
- ^{xxvii} Ibid
- ^{xxviii} [2020] EWCA Civ 1058 para 199
- ^{xxix} [2020] EWCA Civ 1058 para 171
- ^{xxx} [2020] EWCA Civ 1058 para 1999
- ^{xxxi} Amnesty, 2018, *Trapped in the Matrix: Secrecy, stigma, and bias in the Met's Gangs Database*, (<https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf>)